In the Supreme Court of the United States

OCTOBER TERM 1977

No. 77-1649

LLOYD F. EARLY,
Petitioner,

vs.

PALM BEACH NEWSPAPERS, INC., et al.,
Respondents.

ON PETITION FOR CERTIORARI TO THE DISTRICT COURT
OF APPEAL, STATE OF FLORIDA,
FOURTH JUDICIAL DISTRICT

REPLY BRIEF OF RESPONDENTS

HAROLD B. WAHL
WAHL AND GABEL
405 Florida Title Building
Jacksonville, Florida 32202
Telephone: 904/353-7329
Attorneys for Respondents

June, 1978

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

TABLE OF CONTENTS

Table of Authorities

CASES

CONSTITUTIONS

In the Supreme Court of the United States

OCTOBER TERM 1977

No. 77-1649

LLOYD F. EARLY,
Petitioner,
vs.
PALM BEACH NEWSPAPERS, INC., et al.,
Respondents.

ON PETITION FOR CERTIORARI TO THE DISTRICT COURT OF APPEAL, STATE OF FLORIDA, FOURTH JUDICIAL DISTRICT

REPLY BRIEF OF RESPONDENTS

INTRODUCTION

While the Petition is entitled "to the District Court of Appeal", yet the opening sentence of the Petition shows that it is to *review* the "decision below of the *Supreme Court* of Florida". While it is true that one of the six judges of the Florida Supreme Court dissented, yet that

court held simply (Petitioner's Appendix A) that the Florida Supreme Court "is without jurisdiction and therefore the Petition is denied". The one judge dissent was on jurisdiction. Accordingly, the Petition here is erroneously addressed to the Supreme Court of Florida and should be addressed to the District Court of Appeal. We quote from Supreme Court Practice, Stern and Gressman, Section 3.22:

> "Should the higher court decline to exercise its authority, the judgment of the intermediate court rather than the order of refusal by the higher court is the judgment reviewable under §1257. Sullivan v. Texas, 207 U.S. 416; American Ry. Exp. Co. v. Levee, 263 U.S. 19, 20-21; Hammerstein v. Superior Court, 341 U.S. 491, 492; Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U.S. 157, 160; Interstate Circuit, Inc. v. Dallas, 390 U.S. 676, 678, n. 1."

It appears that even with the extension granted by Mr. Justice Powell, the Petition has not been properly filed; the opening paragraph of the Petition specifically states that it is to *"review"* the "decision below of the *Supreme Court of Florida*".

OPINIONS BELOW

The order of the Supreme Court of Florida holding that it was without jurisdiction, and the order denying rehearing thereon, are reported at 354 So.2d 351, and at 3 Media Law Reporter 2183. The opinion of the Fourth District Court of Appeal which should have been sought to be reviewed here is reported at 334 So.2d 50.

JURISDICTION

There is no jurisdiction in the United States Supreme Court here; review is merely sought of an order denying review for lack of jurisdiction by the Supreme Court of Florida. The fact that one of the six judges dissented does not convert the order denying jurisdiction into an appealable final judgment.

QUESTION PRESENTED

Contrary to Petitioner, the opinion of the District Court of Appeal squarely cited and followed the decisions of this court in *New York Times* v. *Sullivan,* (1964) 376 U.S. 254 and succeeding cases, and did *not* unconstitutionally deprive Petitioner of due process of law. The question presented is whether this court shall abandon and overrule the *New York Times* cases, including *Gertz* v. *Welch,* (1974) 418 U.S. 323; *Old Dominion Letter Carriers* v. *Austin,* (1974) 418 U.S. 264; *Greenbelt* v. *Bresler,* (1970) 398 U.S. 6; et al.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment I:

> Congress shall make no law . . . abridging the freedom of speech, or of the press; . . . .

United States Constitution, Amendment XIV, Section 1:

> . . . Nor shall any state deprive any person of life, liberty or property, without due process of law. . . .

STATEMENT

Petitioner County Superintendent Early brought a suit in the Florida state court for libel. As stated by the District Court of Appeal (Petitioner's Appendix C), 334 So.2d 50, at 53, "there is no evidence called to our attention which clearly and convincingly demonstrates that a single one of the articles was a false statement of fact made with actual malice as defined in the *New York Times* case. We thus conclude that the defendants' motion for a directed verdict at the close of the evidence should have been granted by the trial court. The judgment is therefore reversed and the cause remanded with directions to enter a judgment in favor of the defendants."

Far from misapplying the standard of *New York Times,* the District Court of Appeal cited and squarely followed the decisions of this court in *New York Times,* supra; *Garrison* v. *Louisiana,* (1964) 379 U.S. 64; *Gertz* v. *Welch,* (1974) 418 U.S. 323; *St. Amant* v. *Thompson,* (1968) 390 U.S. 727; *Beckley Newspaper Corp.* v. *Hanks,* (1967) 389 U.S. 81; *Rosenblatt* v. *Baer,* (1966) 383 U.S. 75; and *Greenbelt* v. *Bresler,* (1970) 398 U.S. 6. The trial court, as held by the Florida appellate court, erroneously submitted the case to the jury. Under the *New York Times* doctrine there was *no* proof that Respondents made a publication which they either knew to be false or about which they had serious doubts as to truth; let alone proof of convincing clarity.

Far from refusing to apply *New York Times,* the Florida appellate court has squarely followed the *New York Times* cases. Even the one Florida Supreme Court judge, who dissented on the question of jurisdiction, did not dissent on the basis on which certiorari is sought here. He

dissented solely on the basis of *Florida* cases which he, contrary to the other five members of the court, felt required a jury trial. It is significant that the one dissenting judge does not cite a single decision of this court which he thought justified his dissent but relied entirely on Florida cases.

It is also significant that only one of the nine appellate judges who considered the question agreed with the trial judge. All three judges of the District Court of Appeal agreed in reversing the trial judge, and five of the six judges of the Florida Supreme Court refused to review that decision.

THE REASONS WHY THE WRIT SHOULD NOT BE GRANTED

In the first place, as above indicated, there is no jurisdiction here for the Petition. Petitioner seeks certiorari to *review* the order of the Florida Supreme Court holding it had no jurisdiction; as distinguished from seeking to review the decision of the intermediate Florida appellate court which was the highest Florida court in which decision could be had.

Secondly, the decision of the Florida court, far from being at variance with the letter and spirit of the *New York Times* doctrine, squarely follows it. We quote from the opinion of the District Court of Appeal, 334 So.2d 50 at page 52, found at pages 10a and 11a of Petitioner's Appendix C, where after citing the *New York Times* cases, the court said:

> ". . . Additionally, it has been stated that those who hold governmental office may recover for injury to reputation only on clear and convincing proof that the

defamatory falsehood was made with knowledge of its falsity or with reckless disregard for the truth. Gertz v. Robert Welch, Inc., (1974) 418 U.S. 323, at 342.

The Gertz case, supra, also made clear that the defamatory falsehood referred to in the New York times standard refers to *a statement of fact as opposed to pure comment or opinion*:

> 'We begin with the common ground. Under the First Amendment *there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.* But there is no constitutional value in false statements of fact.' (418 U.S. at 339-40)

It thus appears that under the present state of the law concerning an action for libel by a public official, the plaintiff has the burden of showing by clear and convincing evidence that the defamatory statement was (1) a statement of fact, (2) which was false, and (3) made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not. We conclude from our examination of the briefs and those portions of the record to which our attention has been directed, that the plaintiff/appellee did not meet that burden as is illustrated by the following sample of the various articles of which plaintiff complained.

Plaintiff/appellee complained that the defendants characterized his tenure in office as unsuccessful, and stated that he was unfit to hold the office of Superintendent of Public Instruction because of his ineptness, incompetence and indecisiveness. All of these charges

were clearly matters of opinion, not statements of fact, and were proper subject of comment on a public official's fitness for office.

Plaintiff/appellee complained that defendants accused him of cheating and stealing from the public and that he had his 'fingers in the pot.' A charge of cheating or stealing, if false and made with knowledge of such falsity or with reckless disregard for the truth thereof, would certainly be beyond the constitutional privilege established by the New York Times standard. However, in proper context the statements which defendants actually made do not carry the implication suggested by plaintiff. The first article referred to an editorial in which the newspaper asserted that the public and the school board has been cheated by Mr. Early's lack of leadership, while the second article stated in an editorial that 'Mr. Below sits on the sideline doing what he can when Mr. Early's fingers aren't in the pot'—implying, not thievery, but incompetent intervention in the operation of the school system. Taken in proper context, no reader of the newspaper articles could have thought that the newspaper was charging Early with the commission of any criminal offense. Cf. Greenbelt Cooperative Publishing Assn., Inc. v. Bresler, supra.

> Many of the written articles and cartoons, caustic and pejorative as they were, nonetheless had a basis in fact and thus were not false . . ."

Again on page 13a (page 53 of 334 So.2d):

> "Most of the articles and cartoons would fall in the category of what the courts have chosen to call *'rhetorical hyperbole'* or 'the *conventional give and take in our economic and political controversies.'*"

(Italics here and elsewhere added unless otherwise indicated.)

Gertz makes it abundantly clear that "Under the First Amendment there is no such thing as a false idea" and that "however pernicious an opinion may seem" that is not a basis for a cause of action for libel under *New York Times*. It is this square holding of *Gertz* which the Petitioner seeks to overturn.

And when the court stated the rule in *Gertz*, it added as footnote 8 (418 U.S. at 340):

> "8. As Thomas Jefferson made the point in his first Inaugural Address: 'If there be any among us who would wish to dissolve this Union or change its republican form, let them stand undisturbed as monuments of the safety with which *error of opinion may be tolerated* where reason is left free to combat it.'"

Right to Have and Express an Opinion

The Respondents had a perfect right to have and publish the opinion that the Petitioner elected public official was inept, that he lacked leadership, that he was indecisive, and that he was incompetent. The opinion of the District Court of Appeal (334 So.2d 50), Petitioner's Appendix C, points out the justifiable basis for the opinion. To say that there was no basis for the opinion is absurd. These charges were made at Board meetings by members of the Board and the public. (See Admissions of Petitioner on cross-examination at T.155-161). Petitioner himself admitted that a majority of the Board jointly told him to "step out of the way and let Mr. Below [Deputy Superintendent] run the show". (T.161). The Respondents are entitled under the First Amendment to express their opinion. This court denied certiorari at 410 U.S. 984 from the

Florida decision of *Gibson* v. *Maloney*, (Fla. D.C.A. 1, 1972) 263 So.2d 632, where at page 637 the right to express an opinion was squarely set forth. There was no showing, let alone proof of convincing clarity, that Respondents here did not have a good faith belief in their opinion.

There is no such thing as a false idea. See *Gertz* v. *Welch*, 418 U.S. at 339-40. If the Respondents had the opinion that Petitioner Early was inept, lacked leadership, was indecisive and incompetent, and they had that idea, they had a perfect right under *Gertz* and *Old Dominion*, supra, to express and reexpress such idea and opinion.

Petitioner complained of the alleged publication that he was a "figurehead". Here again Respondents were entitled to have and publish this opinion especially since it was also expressed and shared by members of the School Board. This is mild criticism compared to that permitted by the *New York Times* cases.

Petitioner complained because the Respondents quoted School Board member McKay who was an "unwavering foe" of the Petitioner. It is not uncommon for an official to be an unwavering foe of his opponent. It cannot be *New York Times* libel to quote fairly public statements of one public official about another public official whom he considers to be incompetent.

Compare the pre-*New York Times* case of *Abram* v. *Odham*, (Fla. 1956) 89 So.2d 334, where at page 337 the Florida Supreme Court quoted Federal cases and said of news criticism by one public figure of another:

> "It is unthinkable that newspapers should not be allowed to give publicity to the matter without fear of being held to liability therefor in a libel suit".

Compare also what this court said in *Bresler*, supra, as to the "legitimate functions of a newspaper" to publish full reports of debates at public meetings of elected officials.

The whole purpose of the *New York Times* doctrine is to permit violent and at times antagonistic comment on public matters, as pointed out in *Garrison* v. *Louisiana*, (1964) 379 U.S. 64. The Respondents had a perfect right to try to "get" a public official whom they honestly considered to be incompetent and unfit for office, and to use rhetorical hyperbole against him.

As stated in *New York Times*, at 376 U.S. 270, "vehement, caustic and sometimes unpleasantly sharp attack" on public officials is the norm.

And as stated in *Garrison* at 379 U.S. 73:

> "Even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and the ascertainment of truth."

Garrison goes on to emphasize that even "ill-will, hatred and intent to harm" are not enough. There must be intent to harm through falsehood. See also *St. Amant*, supra.

Just as in *Ocala Star-Banner*, (1971) 401 U.S. 295 [summary judgment thereafter upheld at 263 So.2d 291 (Fla. D.C.A. 1, 1972)] there is *no* "proof of convincing clarity of calculated falsehood with intent to harm through falsehood to get to the jury".

There was probably sufficient evidence to get a negligence case to the jury at the trial below, *had* it been a case where ordinary negligence standards applied. However, it was not enough evidence to get to the jury under the *New York Times* standard of convincing proof of a

false statement of fact with intent to harm through falsehood.

Here the Respondents had a perfect right to try to get a public official they seriously believed was incompetent and should be replaced (in which belief they were joined by a majority of the School Board and thousands of other people).

There is no proof of convincing clarity that they were out to get him through calculated falsehood. As a matter of fact, under the broad standards of *New York Times*, there is no libel at all here against this elected public official.

If plaintiffs can be charged with "blackmail", *Greenbelt*, supra, 398 U.S. at 11, 14, 15; with being a "traitor", *Old Dominion Letter Carriers*, supra, 418 U.S. 264; with being a "bastard", *Curtis* v. *Birdsong*, (C.A. 5, 1966) 360 F.2d 344 at 348; and with being "destroyed", *Time* v. *Johnston*, (C.A. 4, 1971) 448 F.2d 378 at 384; and all of those charges are merely "rhetorical hyperbole" and the "conventional give and take in our political controversies" how can it possibly be said that the much more innocuous language used here is libelous under *New York Times*.

We repeat that the Respondents had the honest opinion that the elected School Superintendent was incompetent, and they had every right to express that opinion and try to get rid of him.

Editorial Control and Judgment

In *Miami Herald* v. *Tornillo*, 418 U.S. 241, at 258, in striking down Florida's Right to Reply Statute this court stated again:

> "Treatment of public issues and public officials *whether fair or unfair*—constitutes the *exercise of edi-*

torial control and judgment. It is yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved at this time."

Mr. Justice White in his concurring opinion, at page 260, emphasized:

"Of course the press *is not always accurate,* or even responsible, and may *not* represent full and fair debate on important public issues, but the balance struck by the First Amendment with respect to the press is that society must take the *risk* * * * we have never thought that the First Amendment permitted public officials to dictate to the press the contents of its news columns or the *slant* of its editorials."[1]

(Parenthetically, if elected superintendent Early may recover here, then certainly he has been able to dictate to the press the contents of its news columns and/or the *slant* of its editorials.)

In *Old Dominion Letter Carriers* v. *Austin,* (1974) 418 U.S. 264, the Court held that the *New York Times* standards applied even to a libel action against a union "during a continuing organizational drive." It overruled application of state libel law. As there stated at page 283, the "federal law gives a union license to use *intemperate, abusive or insulting language* without fear of restraint or

1. The writer stated in amicus curiae brief filed in this Court in *Miami Herald,* **supra**:

"It is essential for the people to know what goes on, particularly in the political field. But if every time a news story is published on a political matter the newspaper has to worry about a lawsuit or a criminal charge much news will not be published and the public will be deprived of its right to know."

penalty if it believes such *rhetoric* to be an effective means to make its point," following the *New York Times* cases, and specifically applying *New York Times.* The *Old Dominion* case was decided under *New York Times* law.

The Court went on to say, at 284, that "the use of words like 'traitor' cannot be construed as representations of fact * * * to use loose language or undefined slogans that are part of the conventional give and take in our economic and political controversies—like 'unfair' or 'fascist' —is not to falsify facts * * * Here, too, *there is no such thing as a false idea.* However pernicious an opinion may be, we depend for its correction not on the consciences of judges and juries but on the competition of other ideas. *Gertz* v. *Welch,* 418 U.S. 323."

It will be observed that *Old Dominion* squarely *cites and follows* the holding of *Gertz* that there is no such thing as a false idea and that however pernicious an opinion may be a libel suit is not the correction therefor.

The opinion in *Old Dominion* then, at page 284, cited *Greenbelt* v. *Bresler,* (1970) 398 U.S. 6, at 14, where the court reversed a libel judgment referring to "blackmail," holding that the "word was no more than *rhetorical hyperbole, a vigorous epithet* used by those who considered Bresler's negotiating position extremely unreasonable."

And so here the language used by the Respondents, and claimed by the public official to be libelous, is at most "rhetorical hyperbole" or a "vigorous epithet" believed by the publisher to be "an effective means to make its point."

Even if the Respondents "misinterpreted" actions or documents, that is "not enough to create a jury issue" as to constitutional malice in the case of a public official. *Time* v. *Pape,* (1971) 401 U.S. 279, at 290, 291.

In *Old Dominion*, the Court at page 281 followed *New York Times* and reversed, saying: "Instructions which *permit* a jury to impose liability on the basis of the defendants' hatred, spite, ill will, or desire to injure are 'clearly impermissible' * * * *Ill will toward the plaintiff, or bad motives, are not elements of the New York Times standards.*"

In *Linn* v. *Plant Guard Local*, (1966) 383 U.S. 53, the Supreme Court had considered the right of free speech in union matters and expressly adopted the *New York Times* standard. This was followed in *Old Dominion*, where at 281 the court said:

> "The Linn Court explicitly *adopted the standards of New York Times Co.* v. *Sullivan*, 376 U.S. 254, and the heart of the New York Times test is the requirement that recovery can be permitted only if the defamatory publication was made 'with knowledge that it was false or with reckless disregard of whether it was false or not * * *'
>
> It is therefore clear that the libel judgments in this case must be reversed * * * the court has often recognized that in cases involving *free expression* we have the obligation not only to formulate principles capable of general application, but also to *review the facts* to insure that the *speech involved* is not protected under federal law. (Citing New York Times, Greenbelt, et al.)."

In *Old Dominion*, at 272, the court went on to say that labor controversies (*like politics*)

> "are frequently characterized by *bitter and extreme* charges, counter charges, unfounded rumors, *vituperations*, personal *accusations*, *misrepresentations* and

distortions. Both labor and *management often speak* bluntly and embellish their respective positions with imprecatory language."

The court upheld

> "this freewheeling use of the written and spoken word * * * to encourage free debate * * * and in order to prevent unwarranted intrusion upon *free discussion* * * * *The Court therefore found it appropriate to adopt by analogy the standards of New York Times* * * * Accordingly we held that libel actions under state law were pre-empted by the federal labor laws to the extent that the state sought to make actionable defamatory statements in labor disputes which were published without knowledge of their falsity or reckless disregard for the truth."

Since these are the standards of *New York Times*, they are applicable to criticisms of County Public School Superintendent Early here. The Court in *Old Dominion*, at 284-285, expressly referred to such "loose language" as part of the conventional give-and-take in our economic and *political* controversies.[2] *Linn* has been cited many times in the succeeding *New York Times* cases, and *Old Dominion*, citing *Linn* and *Gertz*, was set for oral argument along with *Gertz*.

---

2. As stated in *Time* v. *Johnston*, (C.A. 4, 1971) 448 F.2d at 384:

> "To deny the press the right to use *hyperbole*, under the threat of removing the protective mantle of New York Times, would condemn the press to arid, desiccated recital of bare facts. Just as was plain in *Greenbelt* v. *Bresler*, (1970), 398 U.S. at p. 14, that the term 'blackmail' was mere hyperbole and did not charge the commission of a criminal offense, and similarly that the word 'bastard' in *Curtis* v. *Birdsong*, (C.A. 5, 1966) 360 F.2d 344, 348, was not intended to charge the highway patrolman with 'having been born out of wedlock,' so the phrases here were hyperbole so that 'destroyed' did not mean plaintiff had 'literally' been destroyed."

Free Discussion

This Court in *Miami Herald,* supra, 418 U.S. at 259, followed an earlier opinion and said:

> "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the *free discussion* of governmental affairs.[3] This, of course, includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes. The Constitution specifically selected the press . . . to play an important role in the discussion of public affairs. Thus the press serves and was designed to serve as a *powerful antidote* to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials selected by the people responsible to all the people whom they were elected to serve. Suppression of the right of the press to praise or *criticize governmental agents* and to *clamor or contend for or against change . . . muzzles* one of the very agencies the framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it *free.*" *Mills* v. *Alabama* (1966) 384 U.S. 214 at 218-219.

The defendants here did just what the Supreme Court has repeatedly said they should do, whether it be by "criticism", or "clamor for change", or "rhetorical hyperbole" or "vigorous epithet" or "intemperate, abusive or insulting language, believing such rhetoric to be an effective means to make its point."

---

3. This same language was quoted and followed on May 1, 1978, in *Landmark Communications* v. *Virginia,* ..... U.S. .....

> "Mere words of vituperation and abuse are not of themselves actionable and libelous." *Curtis* v. *Birdsong,* (C.A. 5, 1966) 360 F.2d 344.

This court further held in *Virginia State Board of Pharmacy* v. *Virginia Citizens Council,* (1976) 425 U.S. 748, and *Linmark* v. *Township,* (1977) 431 U.S. 85, that First Amendment protection was afforded to the dissemination of commercial information.

If First Amendment protection is thus given to commercial advertising, how much more does the First Amendment protect the public's right to know, and the right of the press to publish, what goes on with respect to an elected county School Superintendent.

Cox Broadcasting v. *Cohn,* (1964) 420 U.S. 469, at 496, emphasizes the right of the news media to publish matters of public interest, especially when they are in the public records, "even though offensive to the sensibilities of the supposed reasonable man". Any other course "would invite timidity and self-censorship and very likely lead to the suppression of many ideas which would otherwise be published and that should be available to the public—*Reliance must rest upon the judgment of those who decide what to publish or broadcast.*"

This court in *Nebraska Press* v. *Stuart,* (1976) 427 U.S. 539, unanimously upheld the First Amendment protection of the press. The court held unconstitutional an attempt to impose gag orders against publication of what went on in criminal trials. This was on the theory that the people have a "right to know" what goes on in matters of public interest just as they had a right to know about elected Superintendent Early. This court unanimously rejected the ruling of the Nebraska court that the First

Amendment rights of the news media had to be sacrificed "to preserve the defendant's rights". The same thing applied to Petitioner. Far from there being conflict with established law in the opinion of the Florida appellate court, such law is bottomed squarely on the *New York Times* cases.

We respectfully refer the court to the *dissenting* opinion of Mr. Justice Fortas in *St. Amant*, supra, 390 U.S. 727 at 734-735, to show just how far the majority opinion went and why there is no merit to Petitioner's Petition here.

This court as late as May 1, 1978, said in *Landmark Communications* v. *Virginia*, ... U.S. .....;

> "Our prior cases have firmly established, however, that injury to official reputation is an insufficient reason 'for repressing speech that would otherwise be free.' New York Times v. Sullivan, 376 U.S. at 272-273. See also Garrison v. Louisiana, 379 U.S. 64, 67. The remaining interest sought to be protected, the institutional reputation of the courts, is entitled to no greater weight in the constitutional scales. See New York Times v. Sullivan, supra."

CONCLUSION

We are interested to observe that the Petitioner "agrees with the trial judge". Unfortunately the trial judge was not in accord with *New York Times*.

Petitioner, as we understand it, now asks the court to recede from its prior *New York Times* opinions including the *Gertz, Old Dominion Letter Carriers, Garrison* and *Bresler* opinions.

Gertz is still the law in stating, as theretofore stated by Thomas Jefferson, and as expressly followed by *Old Dominion*:

> "There is no such thing as a false idea. However pernicious an opinion may be, we depend for its correction not on the consciences of judges and juries but on the competition of other ideas."

Moreover, as held in *Bresler, New York Times, Old Dominion,* et al., and followed by the Florida District Court of Appeal here, the alleged libel was no more than "rhetorical hyperbole" or the "conventional give and take in our economic and political controversies".

However ingenious and seemingly plausible the argument of his counsel may be, Petitioner asks too much. The Writ of Certiorari should be denied.

Respectfully submitted,

HAROLD B. WAHL
WAHL AND GABEL
405 Florida Title Building
Jacksonville, Florida 32202
Telephone: 904/353-7329
Attorneys for Respondents

June, 1978